



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

MEMORIAL HERMANN HOSPITAL SYSTEM  
3200 SW FREEWAY SUITE 2200  
HOUSTON TX 77027

#### **Carrier's Austin Representative Box**

47

#### **MFDR Date Received**

JULY 14, 2006

#### **Respondent Name**

CONTINENTAL CASUALTY CO

#### **MFDR Tracking Number**

M4-07-4955-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated July 12, 2006:** "This patient was admitted to Memorial Hermann Hospital by Dr. Kelly Blevins to perform a total knee replacement due to recurrent problems... The complications from recurrent knee problems necessitated the patient's total knee replacement. This inherently complicated procedure and the prosthetics/implants supplied were extensive. The hospital billed its usual and customary charges in the total amount of \$45,868.75. Due to the unusually costly and extensive services and supplies provided and the patient's length of stay, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401(c)(6).". "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges."

**Requestor's Supplemental Position Summary Dated March 30, 2007:** "Memorial Hermann Hospital System's supplemental filing to the medical fee dispute filed on July 11, 2006..."

**Requestor's Supplemental Position Summary Dated April 23, 2007:** "These documents are submitted as additional documentation pursuant to the Division's request dated April 17, 2007."

**Requestor's Supplemental Position Summary Dated May 4, 2007:** "Please accept this letter as the Hospital's reply to the response filed by the carrier in the above-referenced request for medical dispute resolution. In its response, the insurance carrier has requested that the medical dispute resolution be dismissed for the Hospital's alleged failure to produce copies of the explanation of benefits. The Hospital did submit the only explanation of benefits which was contained within its records at the time of filing of this medical dispute resolution."

**Requestor's Supplemental Position Summary Dated October 24, 2008:** "We do not have a contract with this carrier."

**Requestor's Supplemental Position Summary Dated November 14, 2011 and November 28, 2011:** "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method". "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement."

**Affidavit of Michael C. Bennett dated November 14, 2011:** "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "The charges reflected on the attached

Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital, as noted, provided surgical care and subsequent post operative services to this patient who incurred the usual and customary charges in the amount of \$45,868.75 which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

**Affidavit of Patricia L. Metzger dated November 21, 2011:** "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and extent of injury, the services and surgical procedures performed on this patient were complicated and unusually extensive."

**Amount in Dispute:** \$31,047.56

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary Dated May 2, 2007:** "The stop-loss method for outlier cases does not apply because 1) there is no evidence the audited charges exceed \$40,000 since Provider refuses to produce its implant invoices; and 2) the services provided to the claimant were not unusually extensive and costly."

**Response Submitted by:** Stone, Loughlin & Swanson, L.L.P.

**Respondent's Supplemental Position Summary Dated October 22, 2008:** "...there was no contract between the carrier and the hospital. I don't know whether the hospital was a party to any network contract that would have been potentially applicable to this admission."

**Response Submitted by:** James Loughlin at Stone, Loughlin & Swanson, L.L.P.

**Respondent's Supplemental Position Summary Dated December 5, 2011:** "The medical records do not demonstrate that this was an outlier case. There is no evidence that the requestor provided services in this case that would not normally be provided to someone receiving the same type of surgery and that were unusually extensive and unusually costly. Furthermore, the requestor has not identified any specific services it contends were unusually extensive and it has not established the unusual cost of those services. In short, the requestor has not met its burden of proof. For these reasons, the Division should not approve reimbursement under the stop-loss exception but should affirm that reimbursement should be pursuant to the standard per diem method."

**Response Submitted by:** Stone, Loughlin & Swanson, L.L.P., P.O. Box 30111, Austin, TX 78755

### ***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
July 18, 2005 through July 21, 2005	Inpatient Hospital Services	\$31,047.56	\$5,651.25

### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent without listing a reason code on the explanation of benefits.

- 45-Charges exceed your contracted/legislated fee arrangement.
- 900-021-Any network reduction is in accordance with the network referenced above.
- 96-Non-covered charges.
- 993-This service is not reimbursable.
- W1- Workers Compensation state fee schedule adjustment.
- 400-001-The inpatient reimbursement has been based on per diem, stoploss factor or billed charges whichever is less.
- W4-No additional reimbursement allowed after review of appeal/reconsideration.
- 920-002-In response to a provider inquiry, we have re-analyzed this bill and arrived at the same recommended allowance.

### **Issues**

1. Does the submitted documentation support that a contractual agreement exists in this dispute?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

### **Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the carrier paid the services in dispute in accordance with a contracted or legislated fee arrangement. The "PPO DISCOUNT" amount on the submitted explanation of benefits denotes a "0.00" discount. The Division finds that documentation does not support that the services were discounted due to a contract. Both parties contacted the Division and indicated that a contractual agreement does not exist in this case; therefore, reimbursement for the services will be reviewed in accordance with applicable division rules and guidelines.
2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$45,868.75. The Division concludes that the total audited charges exceed \$40,000.
3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6).

Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals’ November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position statement states that “This patient was admitted to Memorial Hermann Hospital by Dr. Kelly Blevins to perform a total knee replacement due to recurrent problems... The complications from recurrent knee problems necessitated the patient’s total knee replacement. This inherently complicated procedure and the prosthetics/implants supplied were extensive. The hospital billed its usual and customary charges in the total amount of \$45,868.75. Due to the unusually costly and extensive services and supplies provided and the patient’s length of stay, the hospital’s usual and customary charges for room and board, ancillary services, drug charges and implants exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401(c)(6).” This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: “The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method”. “Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement.” In support of the requestor’s position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor’s supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar knee surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

4. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor’s position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar knee surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was three days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of three days results in an allowable amount of \$3,354.00.
  - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
  - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$23,707.00.
  - The Division finds the total allowable for the implants billed under revenue code 278 is:

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
Bone Screw	8	No support for cost	\$0.00

		/invoice	
Femoral Knee Component Uncoated	1	\$2,557.00	\$2,812.70
Tibial Component Uncoated	1	\$1,235.65	\$1,359.22
Tibial Insert	1	\$819.00	\$900.90
Patella	1	\$525.85	\$578.44
Bone Cement	1	No support for cost /invoice	\$0.00
Non-Implanted Disposables	1	No support for cost /invoice	\$0.00
Non-Implanted Disposables	3	No support for cost /invoice	\$0.00
TOTAL	17		\$5,651.25

The division concludes that the total allowable for this admission is \$9,005.25. The respondent issued payment in the amount of \$3,354.00. Based upon the documentation submitted, additional reimbursement in the amount of \$5,651.25 is recommended.

### **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in additional reimbursement .

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$5,651.25 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

### **Authorized Signature**

<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature	<b>Elizabeth Pickle, RHIA</b> Medical Fee Dispute Resolution Officer	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <b>12/10/2012</b> Date
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### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**